

J.M.C. asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge George's summary dismissal of Mr. C.'s claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Mr. C. was injured by gunfire on January 20, 2003. Mr. C.'s assailant was the husband of one of Mr. C.'s co-workers. On August 13, 2003, Mr. C. filed an application with the Commission to compel Recall Secure Destruction Services and its insurance carrier, the Insurance Company of the State of Pennsylvania (referred to jointly as "Recall" hereafter), to pay workers' compensation benefits for Mr. C.'s injuries. On March 10, 2004, Judge George granted Recall's motion for summary dismissal of Mr. C.'s claim on the grounds that Mr. C.'s injuries were not compensable under the Utah Workers' Compensation Act. Mr. C. now asks the Appeals Board to review Judge George's decision.

FINDINGS OF FACT

The Appeals Board adopts Judge George's statement of the undisputed facts relevant to Mr. C.'s claim. In summary, Mr. C. and Ms. Ramirez worked together at Recall. Ms. Ramirez's husband, Ramon Cruz, believed that Mr. C. and Ms. Ramirez were having an affair. Mr. C. was scheduled to work on January 20, 2003. Prior to commencing work, as Mr. C. was parking his car on a public street adjacent to Recall's premises, Mr. Cruz shot him.

DISCUSSION AND CONCLUSIONS OF LAW

Section 34A-2-401 of the Utah Workers' Compensation Act requires employers and their insurance carriers to pay workers' compensation benefits to workers who are injured by accident "arising out of and in the course of" their employment. Section 34A-2-102(10)(a) of the Act further states that " 'personal injury by accident arising out of and in the course of employment' includes any injury caused by the willful act of a third person directed against an employee because of the employee's employment." Thus, the Appeals Board must determine whether the undisputed facts of this case establish that the reason Mr. Cruz shot Mr. C. was unrelated to Mr. C.'s employment at Recall.

While it is undisputed that Ms. Ramirez and Mr. C. worked together at Recall, it was not the fact of their co-employment that prompted Mr. Cruz to shoot Mr. C.. Rather, Mr. Cruz took that action out of his belief that Mr. C. and Ms. Ramirez were romantically involved. Such a relationship, if it existed, was personal to the participants and separate from any condition of the workplace. Furthermore, the shooting took place on a public street prior to the commencement of work. Under these undisputed circumstances, the Appeals Board concludes as a matter of law that

Mr. Cruz did not shoot Mr. C. because of Mr. C.'s employment, but rather for personal reasons.

In reaching this conclusion, the Appeals Board has considered the Utah Supreme Court's decisions in Spring Canyon Coal Co. v. Industrial Commission of Utah, 210 P. 173 (Utah 1921), and Westerdahl v. State Insurance Fund, 208 P. 494 (Utah 1922). The age, ambiguity and factual differences of those decisions limit their applicability to Mr. C.'s claim. The Appeals Board has also reviewed the leading treatise on workers' compensation law, *Larson's Workers' Compensation Law*, where it is observed at § 8.02:

When the animosity or dispute that culminates in an assault is imported into the employment from the claimant's domestic or private life, and is not exacerbated by the employment, the assault does not arise out of the employment under any test. . . . A familiar example of private animosity is that engendered by or about spouses. Compensation has been denied when the fight was caused by . . . the employee's misconduct with the assailant's spouse.

This is similar to the situation presented by Mr. C.'s claim.

In summary, under the undisputed facts of Mr. C.'s claim and by application of the plain language of § 34A-2-102(10)(a) of the Act, and consistent with general principles of workers' compensation law, the Appeals Board concludes as a matter of law that Mr. C.'s injuries are not compensable under the Act.

ORDER

The Appeals Board affirms Judge George's decision and denies Mr. C.'s motion for review. It is so ordered.

Dated this 29th day of June, 2004.

Colleen S. Colton, Chair
Patricia S. Drawe
Joseph E. Hatch